IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 27035 of 2007(R)

PETITIONER:

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1. ABDUL AZEEZ, KOLLAMPARAMBIL HOUSE,
DESABHIMANI ROAD, KALOOR, KOCHI-17.

2. M.K.ABUBACKER, MOOLAYIL HOUSE,
VAZHAKKALA, KAKKANAD P.O.,
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
M.K.UMMER, MOOLAYIL HOUSE, VAZHAKKALA,
KAKKANAD P.O., 682 031.

3. M.K.UMMER, MOOLAYIL HOUSE,
VAZHAKKALA, KAKKANAD P.O., 682 031.

BY ADV. SRI.ANIL XAVIER
SRI.M.RISHIKESH SHENOY

RESPONDENTS:

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1. THE SECRETARY (SPECIAL GRADE),
THRIKKAKARA GRAMA PANCHAYATH,
PANCHAYATH OFFICE, KAKKANAD,
COCHIN - 682 030.

2. GALAXY EMPIRE FLAT OWNERS ASSOCIATION,
MOOLEPPADAM ROAD, VAZHAKKALA, KAKKANAD
SOUTH, REPRESENTED BY ITS SECRETARY,
SHRI.N.J.GEORGE.

BY SC SRI.S.SHANAVASKHAN (R1)
BY SRI.MADHAVAN KUTTY (R2)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 27035 of 2007

Dated this the 17th day of September , 2007

JUDGMENT

Heard Sri.Anil Xavier, the learned counsel for the petitioners, Sri.Shanavaskhan, the learned Standing Counsel for the first respondent Panchayat and Sri.M.P.Madhavan Kutty, the learned counsel for the 2nd respondent.

2. My attention was drawn by the learned counsel to Rule 5 of the Kerala Panchayat Raj (Removal of Encroachment and Imposition and Recovery of Penalty for Unauthorized Occupation) Rules 1996 . It was fairly conceded at the bar that the petitioners are not the persons in occupation and hence the proceedings under Rule 5 may not be maintainable as against them. Under these circumstances, I quash Ext.P1 and similar notices issued to the petitioners and direct the Panchayat to issue fresh notice under Rule 5 of Kerala Panchayat Raj (Removal of Encroachment and Imposition and Recovery of Penalty for Unauthorized Occupation) Rules 1996 to the 2nd respondent, who upon receiving such notice will furnish to the Panchayat the details of the persons who are in actual occupation of the individual flats.

Thereupon the Panchayat will issue notice to those persons also and finalise the proceedings in accordance with law.

PIUS C. KURIAKOSE,
JUDGE.

dpk